IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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ORDER

1.S.B. CIVIL WRIT PETITION NO.822/2005-CHANDRA SHEKHAR VS. JUDGE, INDUSTRIAL TRIBUNAL & ANR.

2.S.B. CIVL WRIT PETITION NO.6856/2006- RAJ KUMAR VS. THE JUDGE, LABOUR COURT & ANR.

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 22nd December, 2006

PRESENT
HON'BLE JUSTICE SHRI MOHAMMAD RAFIQ

Mr. Harish Purohit, Advocate, for the petitioner.
Mr. G.R. Punia, Advocate for the respondents.

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BY THE COURT:

In the aforesaid two writ petitions, the petitioners have challenged the award passed by the learned labour court, Udaipur whereby the learned labour court has although held termination of the petitioners made on 28.2.1991 as illegal but instead of directing their reinstatement, relief of lump sum

compensation of Rs32,000/- and 34,000/- respectively granted.

Shri Harish Purohit, learned counsel for the petitioners has made two fold grievance. Firstly he has argued that once when the court found that the retrenchment of the petitioners was illegal, the remedy of reinstatement are follow as a matter of course and he in this connection argued that the finding of the learned labour court about retrenchment being illegal would have the effect of rendering the order of retrenchment passed with regard to both the petitioners as void ab initio. The petitioners in that case should be held not only reinstatement but full back wages for the intervening period. Deviation from this normal rule can be made only if the management specifically pleads and proves some exceptional circumstances. With reference to Annex.6, the seniority list dated 27.10.1994, learned counsel for the petitioners submits that while the names of the petitioners Chandra Shekhar and Raj Kumar are appearing at S.No.101 and 107 therein and they have been retrenched from service whereas the persons appearing at S.No.121 Shri Bhadur Singh who was junior to

both the petitioners retained in service in violation of Section 25G of the Industrial Disputes Act, 1947. Secondly, learned counsel for the petitioner argued that compensation of Rs.32,000/- and 34,000/- respectively granted to both the petitioners does not even represent the fraction of total amount of back wages inasmuch as the petitioners have been retrenched from service on 28.2.1991 and award in their case was passed 13 years thereafter on 1st July, 2004 and therefore the amount of compensation is inadequate.

On the other hand Shri G.R. Punia, learned counsel for the respondents argued that the award passed by the learned labour court directing payment of lump sum compensation in lieu of reinstatement was perfectly justified. In fact the respondents have already in compliance of the aforesaid award sent payment of compensation to the petitioners vide two separate cheques dated 20.10.2004 by registered post, which the petitioners have received on 15.1.2005. He argued that names of the petitioners were wrongly included in the seniority list 27.10.1994 and therefore the respondents immediately

issued a corrigendum dated 5.1.1995 whereby six names which includes the names of the petitioners also, were deleted from the seniority list. It was submitted that petitioners were earlier kept on daily wages basis at the rate of Rs.14/- per day w.e.f. 1st July, 1989 and thereafter from 1st July, 1989 they were paid Rs.700/- per months, which amount was enhanced to Rs.750/- per month w.e.f. 31.3.1990. He therefore prayed that the writ petition may be dismissed.

Having considered the arguments of learned counsel for the parties, I find that the respondents have placed on record the order dated 5.1.1995 which clearly indicate that the names of the petitioners and four others were wrongly included in the seniority list dated 27.10.1994. When the seniority list has been corrected/amended, there can be no basis for assertion that the provisions of Section 25G of the Act were violated. Term of reference in the subject award were limited to the extent whether removal of the petitioners from services of the respondents w.e.f. 28.2.1991 was legal and justified. There was no controversy with regard to correction made in the

seniority list dated 27.10.1994 by order dated 5.1.1995. At the same time, the learned labour court has also found that the workmen had completed 240 days in the calender year immediately preceding the date of their retrenchment. With regard to seniority list, it has been found that others have been regularized pursuant to the judgment passed by this Court and therefore when the petitioners have not been able to prove that any of their juniors were regularized, it cannot be accepted that it was a case of discrimination or violation of Section 25G of the Act of 1947. On consideration of the award and the relevant record, I do not find any error in so far as the finding of the learned labour court with regard to violation of Section 25F of the Act of 1947 is concerned. However, at the same time, I also do not find any error in the finding recorded by the learned labour court in regard to violation of Section 25G of the Act of 1947 although for different reasons.

Coming now to the quantum of compensation and I find that the learned labour court has calculated that the petitioners

could be awarded compensation @ 20% of their wages per annum only, which could could come to Rs.23,000-24,000/- only and if the compliance of Section 25F of the Act of 1947 is even now made, the petitioners would only be entitled to receive salary of 8 months as notice pay which also would come to Rs.22,000/- This formula in my view may not held good because this formula proceeds on the assumption about the continuity of the petitioners in service and their presumed retrenchment made at the present time consequent upon their reinstatement and then the amount of back wages being confined to only 20%. This formula in my considered view is too speculative to be accepted as reasonable. In the facts of this case, the retrenchment was made way back on 28.2.1991 and the award was passed more than 13 years thereafter on 1.7.2004, but at the same time, the compensation amount has to be confined to a reasonable extent and cannot be permitted to be excessive given nature of appointment and the service rendered by the petitioners.

In the facts of the case, the ends of justice would be met

by awarding a sum of Rs.50,000/- to each of the petitioners instead of what has been ordered by the learned labour court. If the payment as ordered by the labour court has already been paid, the same shall be set off/adjusted the amount of Rs.50,000/-. Compliance of the judgment be made within a period of three months from the date of service of copy of the judgment.

The writ petitions are accordingly partly allowed with above directions. There shall be no order as to costs.

(MOHAMMAD RAFIQ),J.

cpgoyal/-